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ABSTRACT

The laws in many States concerning institutional commitment for mental health problems are antiquated in many ways. This paper, one of a series sponsored by the governor's office of education and training, presents the Mississippi law on the subject; discusses the statutory laws in selected States; examines significant case law in Mississippi and other States; presents a model act that has been adopted by a number of States; and makes specific recommendations for improving Mississippi State Law. (JF)

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INSTITUTIONAL COMMITMENT FOR MENTAL HEALTH PROBLEMS

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Larry Tyler, Assistant Professor of Special Education, The University of Mississippi; Dr. Peter Carson, Clinical Psychologist with the Regional Mental Health Center, Oxford, Mississippi; and George Lyles, a student in the School of Law at The University of Mississippi.

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The attitude toward mental health problems has improved markedly in recent years, although there are still many problems in this area. The care and treatment of persons suffering from any sort of mental problem has also showed dramatic improvement in recent years, although, again, much remains to be done. The voluntary or involuntary commitment of persons to institutions for treatment or care is a major problem area both to workers in the mental health fields and to persons connected with the law.

Unfortunately, the laws in many states are antiquated in many ways. There are "snake pits" in the legal procedures, just as there are and have been "snake pits" in the care and treatment of persons with mental disorders.

Statutory Law

Mississippi. The Mississippi Code 1972 Annotated provides for the admission of mentally retarded persons to the North Mississippi Retardation Center, for the admission of "feeble-minded" persons to the Ellisville State School, for the commitment of persons upon affidavit and the examination of physicians, for the commitment of persons charged with criminal offenses, for commitment without an affidavit, and for commitment of youths to the appropriate institution.

Admission to the North Mississippi Retardation Center is governed in the following way:

§ 41-19-9. Eligibility for admission.

A person may be deemed eligible for admission to the North Mississippi Retardation Center if:

(a) His parents, or guardian, or person in loco parentis have resided in the State not less than one year prior to the date of admission; and

(b) He is at least five years of age and he is so mentally retarded that he is incapable of managing himself or his affairs, or he is retarded to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner provided for in section 41-19-11; or

(d) He is under five years of age and is approved for admission by the board of trustees, upon the recommendation of the director, because of having an exceptional handicap.

§ 41-19-11. Admission procedures.

Admission of eligible persons to the North Mississippi Retardation Center shall be by either of the following procedures:

(a) The parents or guardian of any person thought to be mentally retarded may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten days after the admission of the person to the center, the director shall have him examined by a qualified physician and/or psychologist. If he is found not to be mentally retarded, the parents or guardian shall be required to take him from the center. The results of the examination shall be entered upon the person's record in the event he is found to be mentally retarded and eligible to remain at the center.

(b) If any mentally retarded person be afflicted to the extent that he needs care, supervision, or control or if such person be afflicted to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received

by the chancery clerk, he shall follow the same procedure for commitment to the North Mississippi Center as is provided for in the laws of the State of Mississippi for the commitment of persons to the State mental hospitals.

(c) Mentally retarded persons may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

Regional mental health or mental retardation centers may also receive patients, as indicated in the following section:

§ 41-19-41. Commitment of patients to regional mental health and mental retardation centers.

Any regional mental health or mental retardation facility or service established and operated according to the provisions set forth in sections 41-19-31 to 41-19-39, is eligible to admit and treat patients committed by either the chancellors or chancery clerks in the same manner as is provided by the laws of Mississippi for commitment to the state mental institutions.

Persons who are "feeble-minded" may be committed to the Ellisville State School, according to the following provision:

§ 41-19-101. Definitions of "feeble-minded". . .

The term "feeble-minded". . .shall apply to any and all persons with such a degree of mental inferiority from birth, or from infancy or early childhood, that they are unable to care for themselves, to profit by ordinary public school instruction, to compete on equal terms with others, or to manage themselves and their affairs with ordinary prudence, and consequently constitute menaces to the happiness or safety of themselves or of other persons in the community, and require care, supervision and control either for their own protection or for the protection of others. These persons denominated feeble-minded comprise those commonly called idiots, imbeciles and morons, or high grade feeble-minded persons. . . .

§41-19-111. Commitment, care and custody of child.

Any child who is feeble-minded within the meaning of section 41-19-101 may be committed to Ellisville State School pursuant to the procedures set forth in sections 41-21-1 to 41-21-27, Mississippi Code of 1972. . . .

The involuntary commitment of persons alleged to be mentally ill is governed by the following procedures as specified in the law:

§ 41-21-5. Affidavit for commitment.

If any person shall be insane, lunatic, feeble-minded, idiotic or shall suffer from any other mental or nervous condition, affliction or disorder to such an extent that such person be in need of treatment, supervision or control or to an extent that such person be or is likely to become dangerous or a menace if left at large, any relative of such person, or any citizen of the State of Mississippi may, for reasonable cause shown upon sworn testimony before the clerk, make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence, or with the clerk of the chancery court of any county in which such person might then be found. Such affidavit shall request that such person be adjudged to be suffering from mental or nervous condition, affliction or disorder as herein set forth and that such person be committed to and confined in the proper mental institution for treatment, care and supervision. . . .

§ 41-21-7. Summons--appointment of two physicians.

Whenever such an application shall be filed with the chancery clerk, the said clerk, or chancellor of said court, shall issue a writ directed to the sheriff of the proper county to take the person alleged to be suffering from such mental or nervous condition, affliction or disorder into his custody for examination as hereinafter set forth, and said clerk or chancellor shall forthwith appoint and summons two reputable, licensed physicians to conduct an inquiry into the mental and nervous condition of such person in the presence of the clerk and to report their verdict and findings to said clerk of the court; provided, however, that in all counties wherein there is a county health officer, such county health officer, if available, may be one of the physicians so appointed. Neither of the physicians selected shall be related to such person in any way; nor shall such physicians have any direct or indirect interest in the estate of such person. The physicians so appointed shall be selected as having the best available qualifications in the field of mental medicine.

§ 41-21-9. Examination by physicians.

The physicians so appointed shall forthwith make a full inquiry into the mental and nervous condition of the person alleged to be suffering from such mental or nervous disorder and shall make a thorough mental and physical examination of such person, and shall make a report and certificate of their findings to the clerk of said court, which report and certificate shall be substantially in the form hereinafter set forth. In all cases, the said inquiry and examination shall be held and conducted in the presence of the clerk and in the courtroom of the county or the office of said clerk, unless the person alleged to be suffering from

such mental or nervous condition is physically unable to appear in the courtroom or at the clerk's office. At such hearing, any interested person shall have the right to present evidence and testimony as to the mental or nervous condition of the person involved.

§ 41-21-11. Certificate of findings.

When such inquiry and examination has been completed, the said physicians, either together or separately, shall report their findings as to whether or not such person be suffering from a nervous or mental disorder or affliction and be in need of treatment, supervision or control or be or is likely to become dangerous or a menace if left at large. . . .

The said certificate shall be executed in duplicate and one copy thereof shall be filed with the clerk of the proper chancery court and the other copy shall be forwarded to the director of the Mississippi State Hospital at Whitfield, Mississippi or to the director of the East Mississippi State Hospital at Meridian, Mississippi, and shall be retained by him as a part of his official records. In proper cases, however, the copy of such certificate shall be forwarded to the proper official of the Veterans Administration Hospital or other agency of the United States Government concerned rather than to the director of the East Mississippi State Hospital at Meridian, Mississippi.

The physicians making such examination and executing such certificate shall not be liable, civilly or criminally, in any case in which they exercise due diligence and reasonable care and act in good faith, without malice and upon reasonable cause.

§ 41-21-13. Procedure after certification--commitment.

If the certificate of either or both of said physicians be that such person is not suffering from a mental or nervous condition, disorder or affliction, then the clerk of the court, or the chancellor thereof, shall forthwith enter an order adjudging such fact and directing the discharge and release of such person, and if the certificate of both of said physicians be that such person is suffering from a mental or nervous condition, disorder, or affliction and is mentally incapable of taking care of his estate and person, but that such person is harmless and not in need of confinement or special treatment, the clerk of the court, or the chancellor thereof, may appoint a guardian for the person and estate, of such person, and release such person to the care of the guardian. If, however, said physicians certify that such person is suffering from a mental or nervous condition, affliction or disorder as set forth above, the clerk shall enter an order adjudging such fact and shall issue a writ directed to the sheriff of the proper county to take such person into custody and to deliver such person to the director of the Mississippi State Hospital at Whitfield, Mississippi or to the director of the East Mississippi State Hospital at Meridian,

Mississippi, and such sheriff shall execute such writ and deliver such person accordingly; provided, however, that upon receipt of a certification in writing from the United States Veterans Administration, or other agency of the United States Government, that facilities are available and that such person is eligible for care or treatment therein, the clerk may enter an order for delivery of such person to or retention by the Veterans Administration or other agency of the United States Government for such examination, and, in such cases, such chief officer to whom the person is so delivered or by whom he is retained shall, with respect to such person, be vested with the same powers as the said director with respect to the examination of such person and retention of custody or discharge. When such person has been so delivered to, or retained by, said director of the Mississippi State Hospital or to said director of the East Mississippi State Hospital, or the proper official of the Veterans Administration or other agency of the United States Government, as the case may be, such person shall be examined, with all reasonable speed, by the director and staff of said hospital. If, after an examination of the mental and physical condition of said person, it is the judgement of said director and staff that such person is not suffering from a mental or nervous condition, affliction or disorder, such person shall be forthwith discharged, and such fact shall be reported to the proper chancery clerk and such clerk, or the chancellor of said court, shall enter an order accordingly. If, however, it is the judgement of such director and staff that such person is suffering from mental or nervous condition, affliction or disorder and be in need of treatment, supervision or control or be or is likely to become dangerous or a menace if left at large, then such fact, together with the type of mental or nervous condition, affliction or disorder from which such person is suffering, shall be reported to the chancery clerk and said clerk shall make a notation thereof on the general docket and file such report in the papers of said cause, and, in addition, he shall enter a commitment order and send a certified copy of same to the director of the hospital that received such person or to the proper official of the Veterans Administration or other agency of the United States Government, as the case may be. The said director or proper official of the Veterans Administration or other agency of the United States Government, as the case may be, upon the finding of said director and staff that such person is afflicted with or is suffering from such mental or nervous condition, affliction or disorder, as provided herein, and on receipt of a certified copy of the order above referred to, shall assign such person to and cause him to be confined in the proper or appropriate institution to be selected by him for care, treatment and supervision. Nothing herein, however, shall prevent or prohibit the commitment of such person to the Veterans Administration or other agency under the provisions of section 35-5-31.

§ 41-21-15. Hearing before chancellor.

The person so adjudged, or any relative or other person on his behalf, may at any time after such adjudication file a petition in writing and request a hearing before the chancellor of said court either in term time or vacation on the question of whether or not such person is

> insane, lunatic, idiotic, feeble-minded, or is suffering from some other mental or nervous condition, affliction or disorder as set forth above. Upon the filing of such petition the chancellor shall set a date for such hearing and shall give the director of the said hospital that received such person, or the proper official of the Veterans Administration or other agency of the United States Government, as the case may be, notice of the time and place thereof by registered mail, and may require that said director or said official of the Veterans Administration or other agency of the United States Government, as the case may be, have such person present for said hearing. At the time specified, the chancellor shall proceed to hear and dispose of said cause and shall enter his order or decree accordingly. The person adjudicated, or anyone acting in his behalf, shall have the right to summon witnesses and present evidence as in other cases in chancery court. Any party aggrieved by the decision of said chancellor shall have the right to appeal to the supreme court as is provided in other cases. In addition to the above remedies, any person committed to an institution, or any relative or other person acting on his behalf, shall have the right to apply for a writ of habeas corpus as is otherwise provided by statute.

Commitment of persons charged with criminal offenses is handled in the following manner:

> § 41-21-21. Persons charged with criminal offenses.
>
> In cases where a person is charged with a criminal offense and is acquitted on the ground of insanity or feeble-mindedness the circuit judge shall have the authority to order such person conveyed and committed to a mental institution. . . .

A person may, in effect, voluntarily commit himself, subject to the findings of the physicians and the staff of the institution, by the provisions of the following section:

> § 41-21-23. Examination and commitment without affidavit.
>
> In lieu of making an affidavit before the chancery clerk, . . . any person who is suffering from a mental or nervous condition, affliction or disorder as herein provided, or any relative of such person or any citizen of this state may cause a physical and mental examination to be made of such person by two reputable, licensed physicians, ... If both such physicians, after said examination, be of the opinion that such person is suffering from a mental or nervous condition, disorder, or affliction as provided herein, then such fact shall be certified to the director of the Mississippi State Hospital or to the director of the East Mississippi State Hospital . . . ;

whereupon the said director may cause such person to be examined by the director and staff of said hospital. If after an examination of the mental and physical condition of the said person, it is the judgment of the said director and staff that such person is suffering from a mental or nervous condition, affliction or disorder and be in need of treatment or control or is likely to become dangerous or a menace if left at large, then the said director shall have the authority to admit the said person to the proper or appropriate hospital for care, treatment, and supervision, but no person shall be admitted to any state mental institution under this section unless and until such person is examined by the said director and staff and found to be suffering from a mental or nervous condition, affliction or disorder as provided herein. . . .

Courts have an obligation to place minors in the most appropriate type of institution, according to the following section.

§ 43-21-23. Medical examination; transcript of records, conveyance to institutions.

The court may cause any child coming within its jurisdiction to have a physical and mental examination made. It shall be the duty of the court committing any child to any institution or agency to transmit with the order of commitment a carefully prepared transcript of the proceedings, social investigation, medical report, concerning said child, so as to aid the officials of the institution or agency in better understanding and classifying the child. If said medical examination discloses that any child is tubercular, feeble-minded or insane, such child shall not be committed to any state institution for delinquent or neglected children, but shall be committed in the manner provided by law to the particular state institution for such disabilities or infirmities. . . .

Alabama. The Alabama Code makes provision for voluntary admission of persons who need help with mental problems; for the commitment of persons found to be mentally ill, provided space is available in an institution; for the commitment of the"feeble-minded" to a home for the feeble-minded; for the voluntary admission to an institution of the mentally retarded; for the admission of the same by court-initiated action; for the admission of the same by the initiation of action of any "responsible person"; and for the establishment of regional mental health centers with broad responsibilities.

Voluntary, temporary, and emergency admissions are handled in the following manner:

> §205(1). . .(1) Any citizen of this state may be admitted. . . on his own application. (2) . . .No person shall be accepted if. . . the applicant would result in an overcrowded condition. (3) No citizen admitted. . . shall lose any legal right, privilege, or immunity. . . .

Involuntary commitment proceedings may be initiated in the following way:

> §208. . . .When a relative, friend, or other party interested desires to place a person as a patient in one of the state hospitals, he shall apply to the judge of probate. . .and the judge. . .shall investigate the case, . . .and if he is reasonably convinced that the case is a suitable one, he shall make application to the superintendent. . . . [T]he judge may cause to be . . .filed with the proper agency. . . of the United States government, an application. . .to the proper government hospital.
>
> §210. . . .When informed by the superintendent that the person can be received as a patient, the judge of probate shall examine witnesses, at least one of whom shall be a physician, and fully investigate the facts of the case. . . ; and if the judge. . .believes that the person is sufficiently defective mentally to be sent as a patient to a hospital for insane persons, the judge of probate shall make two copies of a certificate of mental disqualification. . . .

Persons considered "mental inferiors or deficients" or "feeble-minded"

> §236. . . .over the age of five years, and a resident of the state of Alabama for more than a year, may be confined to the Home.
>
> §239. . . .The relative, guardian, or other person interested. . . desiring to commit. . .persons to the home may, if the person be under the age of twenty-one years, apply to the judge of the juvenile court. . .and if over the age of twenty-one years to the probate judge . . . ; upon . . .application such judge. . .shall at once apply to the superintendent. . .and upon being advised by the superintendent that such applicant can be received, . . .such judge shall examine three persons, one of whom must be a practicing physician, who are acquainted with the person sought to be committed, and with the condition of such person, and such judge, if he is satisfied. . .that the person is. . .eligible to admission into the home shall make an order. . . committing such person . . . .

The procedure for handling institutionalization of mentally retarded persons is as follows:

> §252 (a9). . .voluntary admission;. . .The superintendent may receive for observation and diagnosis any resident of Alabama, for whom application is made by his father, mother, or guardian or. . . by an adult, next of kin. . .and, if found to be a mentally retarded individual may be admitted to the institution. . .[P]reference in admission shall be given to children and women of child-bearing age.
>
> §252 (a12). . .The board may receive any mentally retarded individual. . . on court order. . . ; provided, however, that the board has advised the court that adequate facilities are available. . . .
>
> §252 (a13). . .(a) Upon the written application of any responsible person, on oath, stating that he believes a resident. . .to be a mentally retarded individual and in need of care, . . .and further believes that the father, mother, or guardian of said individual has failed to secure proper care. . .the probate court. . .shall take jurisdiction. (b) The probate court may. . .take. . .the individual into custody. . .and, the probate judge may appoint an attorney or guardian ad litem. . . . (c) The probate judge shall appoint two physicians to. . .report to the court their findings as to the mental condition of said individual. . . . (d). . .If said report is not unanimous. . .the probate judge shall. . .dismiss the application. (e) If the physicians' report is unanimous to the effect that it finds said individual to be a mentally retarded individual and in need of. . . care. . . , and the board has advised the court that such individual can be accepted, the judge of probate shall enter an order directed to the board requiring it to receive said individual.

In addition, sections 252 (14g-t) of the Code provide for the formation of regional mental health centers. These centers are authorized to operate certain programs, where

> "Programs" means (1) the planning. . .of. . .steps leading to comprehensive state and community action to combat all forms of mental or emotional illness or debility. . .(2). . .studies. . . , the development of public awareness. . . , and the coordination of state and local activities. . . ; (3) the conducting of research. . . ; (4) the providing of any one or more of the following services: inpatient, outpatient, partial hospitalization, emergency care, community education and consultation, diagnosis, evaluation, rehabilitation, precare, residential care, aftercare, and prevention of all forms of mental or emotional illness. . . ; (5). . .clinical training. . . ; (6) any combination of any of the foregoing.

District of Columbia. The District of Columbia Code provides for voluntary hospitalization of persons with mental problems, as well as for institutionalization of "nonprotesting" persons for well-defined short periods of time. The Code also contains a provision for involuntary commitment of the mentally ill and the "feeble-minded." In addition there are special provisions for a juvenile feeble-minded person and for any feeble-minded person convicted of a crime.

A person may apply to a public or private hospital in the District of Columbia for admission as a voluntary patient

> §21-511. . . .for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon. . .request. . .the administrator of the public hospital shall, if an examination by an admitting psychiatrist reveals the need for hospitalization, or the administrator of the private hospital. . .may, admit the person as a voluntary patient. . . .

A nonprotesting person may be hospitalized by having

> §21-513. . .A friend or relative of a person believed to be suffering from a mental illness. . .apply on behalf of that person to the admitting psychiatrist of a hospital by presenting the person, together with a referral from a practicing physician. . . .

In emergency cases, the following procedures may be employed:

> §21-521. . .An. . .agent of the Department of Public Health . . . , or an officer authorized to make arrests. . .or the family physician. . .who has reason to believe that a person is. . .likely to injure himself or others. . .may, without a warrant, take the person into custody. . .and make application for. . .emergency observation and diagnosis. . . .

> §21-522. . .[T]he administrator. . .shall admit. . .if the application is accompanied by a certificate of a psychiatrist. . .at the hospital stating that. . .he is of the opinion that [the person]. . . is likely to injure himself or others unless he is immediately hospitalized. Not later than 24 hours after the admission. . .the administrator. . . shall serve notice of the admission, by registered mail, to the spouse, parent, or legal guardian of the person and to the Commission on Mental Health.

Specific time limits are imposed on the detention. These include:

> §21-523. . .A person admitted. . .may not be detained. . .in excess of 48 hours. . .unless the administrator of the hospital has. . . filed a petition with the court for an order authorizing the continued hospitalization. . .for a period not to exceed 7 days. . . .
>
> §21-524. . .Within a period of 24 hours after the court receives a petition for hospitalization. . .the court shall:
>
> (1) order the hospitalization; or
> (2) order the person's immediate release. . . .
>
> §21-525. . .The court shall grant a hearing to a person whose continued hospitalization is ordered. . .if he requests the hearing. The hearing shall be held within 24 hours. . . .
>
> §21-527. . .The chief of service of a hospital in which a person is hospitalized under a court order. . .within 48 hours. . .[shall] have the person examined by a physician. If the physician, after his examination, certifies that. . .the person is not mentally ill to the extent that he is likely to injure himself or others. . .the person shall be immediately released. . . .
>
> §21-528. . .[T]he administrator. . .may, if judicial proceedings for. . .hospitalization have been commenced. . .detain the person. . . during the course of judicial proceedings.

The basic procedure for involuntary committment in the District of Columbia is outlined in the following section:

> §21-541. . .Proceedings for the judicial hospitalization. . . may be commenced by the filing of a petition with the Commission on Mental Health by his spouse, parent, or legal guardian, by a physician, . . .the Department of Public Health, or by an officer authorized to make arrests. . . . The petition shall be accompanied by (1) a certificate of a physician. . .or (2) a sworn written statement by the petitioner that: (A). . .the person is mentally ill. . .and (B) the person has refused to submit to examination by a physician. . . .

Commitment of persons for "feeble-mindedness" may be accomplished in the District of Columbia in the following manner:

> §21-1103. . . . When a person. . .is supposed to be feeble-minded, his guardian, or a relative, or a reputable citizen of the District of Columbia may file with the clerk of the. . .Court. . .a petition. . . . On a petition. . .there shall be endorsed the names and addresses of witnesses. . .by whom the truth of the allegations. . .may be proved, as

well as the name and address of a qualified physician. . .having personal knowledge of the case. . . . .

§21-1105. . . . Pursuant to the filing of a petition. . .the court shall appoint two physicians, at least one of whom is skilled in the diagnosis and treatment of mental diseases, to make an examination of the alleged feeble-minded person. . . .

§21-1105. . . . . Pending the hearing of the petition, the court may order the detention of the alleged feeble-minded person, or the placing of him under temporary guardianship. . . . Pending the hearing of the petition, the alleged feeble-minded person may not be detained in a place provided for the detention of persons charged with or convicted of a criminal or quasi-criminal offense.

§21-1107. . . . When a jury is not required, the court shall determine the question of whether the person is feeble-minded. If the court deems it necessary, or if the alleged feeble-minded person or a relative or a person with whom he resides so demands, a jury shall be summoned. . . .

A special provision is made for children and convicted persons who appear to be feeble-minded when brought before the court.

§21-1114. . . . When a child is brought before the juvenile court. . . and it appears to the court. . .that the child is feeble-minded. . .the court may adjourn the proceedings and direct a suitable officer. . . or. . .person to file a petition. . . .

§21-1115. . . . On the conviction by a court. . .of a person of an offense. . .the court when satisfied. . .that the person is feeble-minded. . .may suspend sentence. . .and direct that a petition be filed. . . .

Florida. In Florida, the law provides for emergency admission to a mental institution as follows:

§394.463. . .A person may be admitted to a receiving facility on emergency conditions if there is reason to believe that he is mentally ill and because of such illness is likely physically to injure himself or others if he is not immediately detained.

. . .An emergency admission may be initiated as follows:
1. A judge may enter an ex parte order. . . ; or
2. A law enforcement officer may take a person. . .into custody . . . ; or
3. A physician may execute a certificate. . . .

. . .A patient who is admitted for an emergency. . .shall be examined by a physician without unnecessary delay, and may be given such treatment as is indicated by good medical practice.

. . .At any time the examining physician concludes that the patient need not be hospitalized. . .the patient shall be discharged immediately unless. . .under criminal charges. . . .' The patient must be released

within twenty-four hours. . .except when the. . .physician concludes. . . that the patient may require evaluation, in which case. . .a proceeding for court-order evaluation shall be initiated.

. . .A court-ordered evaluation may be initiated as follows:
1. Any person may file with the court a petition. . .supported by affidavits of two additional persons. . . ; or
2. Any person may file with the court a petition. . .accompanied by the certificate of a physician. . . .

. . .The judge shall set a hearing on the petition. . . . The hearing shall be set within five days. . . . The hearing may be waived in writing by the patient. The patient and his guardian shall be informed of the right to counsel by the judge and, if the patient cannot afford an attorney to represent him at the hearing, the judge shall appoint one.

. . .After a hearing. . .if the judge is satisfied that immediate evaluation is necessary, he shall issue an order to any law enforcement officer. . . . If the judge is satisfied that evaluation is necessary, but that the patient need not be hospitalized immediately. . .he may order the patient to appear at a . . .specified time.

. . .A patient who is admitted to a receiving facility may be detained for a period not to exceed five days. . . . Within the five day evaluation period one of the following actions shall be taken:
1. The patient shall be released;
2. The patient shall be released for out-patient treatment. . . ;
3. The patient shall agree to hospitalization as a voluntary patient; or
4. Proceedings for involuntary hospitalization shall be initiated.

In Florida, a person may be voluntarily admitted for care and treatment under the following provisions:

§394.465. . .A facility may receive. . .any individual eighteen years of age or older making application for admission, any individual under eighteen years of age for whom such application is made by his parent or guardian, [or] any person legally. . .incompetent for whom such application is made by his guardian. If found to show evidence of mental illness. . .such person may be admitted. . . .

. . .A facility may admit. . .any individual fourteen years of age or older who makes application therefor. If such individual is under eighteen. . .his parent or guardian may apply for his discharge, and the administrator shall release the patient within five days. . . .

. . . . . .

. . .Proceedings for involuntary hospitalization of a voluntary

patient shall not be commenced unless written request for discharge has been filed with the administrator.

Sections 394.479 to 394.484 of the Florida statutes contain the Interstate Compact on Mental Health. This legislation will be discussed in another section of this paper.

The Florida statutes also provide for a Children's Psychiatric Center, which may serve children between the ages of five and fourteen years, admission to which is governed by the folling sections of the statutes:

> §394.56. . . . Application for admission. . .shall be made to the division of mental health. . . . However, every application shall be signed by the parent or legal guardian. . .and the application shall be accompanied by a certificate of at least one licensed physician. . . and shall state. . .that the applicant is severely emotionally disturbed or psychotic. . . .
>
> . . .If the application is accepted, the applicant shall be admitted to the center as space and facilities shall become available. . . .
>
> . . .Any child admitted. . .whose parent or legal guardian requests his release. . .shall be forthwith released except that. . .the superintendent may file a petition in the office of the county judge. . . requesting the certification of said child to the center. . . .
>
> §394.57. . .Whenever any child in this state is believed to be severely emotionally disturbed or psychotic, a written petition. . . may be made to the county judge. . . . Every petition so filed shall be accompanied by a report of at least one qualified physician. . . .
>
> . . .The petition may be filed by : the mother, father, or legal guardian of the said child; any three citizens of the state who are acquainted with the child, provided one such citizen shall be a qualified physician who has examined the mental condition of the child. . . .
>
> . . . . . .
>
> . . .Whenever a petition is filed the county judge shall set an immediate or very early hearing on the petition. . . . All hearings will be conducted in an informal manner. . .and the child and his parents or legal guardian shall have an opportunity to be represented by counsel and if no counsel is provided the court may appoint counsel.

> . . .The parents or legal guardian. . .or the judge may request further examination of the alleged severely emotionally disturbed or psychotic child and if such request is made the judge shall appoint. . . two practicing physicians. . . .
>
> . . .On the basis of the petition and original examination report and examining committee's report, if any, and such other evidence and testimony as may be presented, the judge shall determine whether or not the child. . .is severely emotionally disturbed or psychotic. . . ; provided, however, no child shall be admitted to the center without the consent of the director of the children's division. . . .

In Florida the Division of Retardation of the Department of Health and Rehabilitative Services operates residential facilities for the retarted known as Sunland Training Centers and Sunland Hospitals. Admission to these residential facilities is governed by the following sections of the law:

> §393.021. . .All applications shall be made to the county judge in the county where the applicant resides. The judge shall. . .forward the original and two copies. . .to the director of the division of retardation. . . .
>
> . . .Such application shall contain a report by a qualified physician . . . . In addition, when possible, the applicant shall be tested by a psychologist. . .who shall certify the results of appropriate psychological examinations.
>
> . . . . . .
>
> §393.03. . .No person shall be admitted. . .until the application . . .has been accepted by the department. . . . No person shall be denied care or treatment because of his age.
>
> . . .No applicant shall be admitted while suffering from any contagious or communicable disease.
>
> . . .No female applicant who is pregnant shall be received.
>
> §393.031. . . .An alternative method of admission. . .shall be to submit a written application to the county judge of the county wherein the applicant resides. . . . The county judge, . . .upon being satisfied that the applicant is twenty-one years of age or older or that the person applying on behalf of said person is his parent or legal guardian, shall forward the application. . . .

> . . .The division of retardation may admit. . .any individual who, in its opinion, is retarded or has symptoms of retardation and who, being twenty-one years of age who is retarded or has symptoms of retardation if his parent or legal guardian applied therefor in his behalf. No individual admitted under this section may be retained. . . for more than ninety days unless he is professionally diagnosed as retarded.
>
> . . . . . .

The general provisions for commiting a person who is retarded to an institution in Florida are contained in this section:

> §393.11. . . .When a person is retarded and needs the services of the division of retardation, the county judge of the county in which the person resides shall have jurisdiction to conduct a hearing and enter an order committing the person. . . . The hearing and order shall be. . .according to the following procedure:
>
> (1) Three persons, one of whom shall be a physician, shall constitute a petition committee. . . .
>
> (2) Upon receiving the petition, the county judge shall appoint an examining commission. . . . The examining commission shall consist of a responsible citizen. . . , one practicing physician. . . , and one practicing psychologist. . . .
>
> (3) If the examining commission finds the. . .person to be incompetent . . .these findings shall be reported to the county judge. The county judge shall then either discharge the person or commit the person. . . .

Kansas. The laws of Kansas provide for informal admission in the following way:

> §59-2904. . . .Any person sixteen. . .years of age or older may be admitted to a psychiatric hospital as an informal patient when there are available accomodations and in the judgement of the head of the hospital. . .such person is in need of care or treatment therein. . . .

Voluntary admission is provided for in the following manner:

> §59-2905. . . .Any person may be admitted. . .as a voluntary patient when there are available accomodations and in the judgement of the head of the hospital. . .such person is in need of care or treatment therein. Such person, if sixteen. . .years of age or older, shall make written application for admission. If such person is less than sixteen. . .years of age, then the parent. . .shall make such written application. . . .

Emergency hospitalization may be accomplished in the following way, according to the Kansas law:

> §59-2908. . . .Any peace officer who has reasonable belief upon observation that any person is a mentally ill person. . .may take such person into custody without a warrant. If he takes such person into custody when the probate court. . .is available, the peace officer shall forthwith present. . .an application for an order of protective custody . . . . If he takes such person into custody when such court is not available, he shall transport such person to any general hospital or psychiatric hospital. If the head of such hospital. . .has reason to believe that such person is. . .mentally ill. . . , and if such hospital is willing to admit such person the peace officer shall present. . . the application. . . , but if there is no. . .hospital available. . . the peace officer may detain such person in any other suitable place until the close of the first day such probate court is available: Provided further, that such person shall be entitled to immediately contact his legal counsel or next of kin.
>
> §59-2909 .Any. . .hospital. . .may admit and detain any person for emergency observation, care or treatment under any of the following procedures:
>
> A. Upon an order of protective custody. . . .
>
> B. Upon written application of any peace officer having custody. . . .
>
> C. Upon the written application of any reputable individual. . . .
>
> The application shall be accompanied by a statement. . .of a physician. . . .
>
> §59-2910. . .Whenever any person has been admitted to a. . .hospital . . . , the head of the hospital. . .shall immediately notify such person's legal guardian, spouse, or any next of kin. . . .

A person may be taken into protective custody by court order, according to the following section of the Kansas law:

> §59-2912. . .A probate court may issue an ex parte order of protective custody under any of the following circumstances:
>
> A. Upon the verified application of any peace officer. . . .
>
> This order shall only be valid until the close of the second available day of the probate court. . . .
>
> B. Upon the verified application of any reputable person, if the application provided for [in the next section]. . .has been filed in the court. . . .

This order shall only be valid until the conclusion of the hearing. . . .

C. Upon the verified application of any reputable person or upon the court's own motion at any time after the hearing. . .when the court has found. . .that the proposed patient is a mentally ill person. This order shall be valid until the order for care or treatment is executed.

The order of protective custody shall authorize. . .to take the proposed patient. . .and place him in a. . .hospital. . .or other suitable place willing to receive him. . . .

The legal procedure for determining whether or not a person is mentally ill person is as follows:

§59-2913. . .Any reputable person may file in the probate court. . . a verified application to determine whether the proposed patient is a mentally ill person. . . .

Any such application may be accompanied, or the probate court may require that such application be accompanied, by a statement. . .of a physician.

§59-2914. . .Upon the filing of the application, . . .the probate court shall issue the following:

A. An order fixing the time and place of the hearing. . . . The time. . .shall in no event be earlier than seven. . .days or later than fourteen. . . .

B. An order that the proposed patient appear at the time and place. . . .

C. An order appointing an attorney. . . . The proposed patient shall have the right to engage an attorney of his own choice. . . .

D. An order that the proposed patient shall. . .consult with his . . .attorney. . . .

E. An order for mental evaluation. . . .

§59-2915. . .At or after the filing of the application. . .and prior to the hearing. . .the court may issue. . . :

A. An order of protective custody. . . .

B. An order for investigation. . . .

C. An order of continuance. For good cause shown, one continuance may be granted for no longer than seven. . .days. . . .

D. An order of advancement. . . .

§59-2916. . .The notice. . .shall be given to the proposed patient. . . , the attorney. . . , and to such other persons as the court shall direct. . . .

§59-2917. . .The hearing shall be held at the time and place specified. . .unless the proposed patient has requested a continuance . . . . The hearing shall be held to the court only, unless the court shall order the hearing to be held before a commission, or unless the proposed patient shall. . .request. . .a hearing before a jury. If the hearing is tried before a commission, said commission shall be appointed by the court and composed of two. . .persons. . .licensed to practice medicine. . . .

The jury, if one is requested, shall consist of six. . .persons. . . .

The applicant and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in [an]. . .informal . . .manner. . . .

If the applicant is not represented by counsel, the county attorney shall represent the applicant. . . .

If. . .the court finds that the proposed patient is a mentally ill person, the court shall order care or treatment. . .at any of the following facilities:

A. a state psychiatric hospital;

B. any facility of the United States government. . . ;

C. a private psychiatric hospital;

D. other facilities for care or treatment. . . .

. . . . . .

§59-2918. . .The proposed patient may, at any time prior to the hearing . . .request. . .that said hearing be continued for ninety. . .days, for short term care or treatment. . . .

. . . . . .

New York. The Mental Hygiene Law of New York provides for an informal admission for mental illness in the following sections:

§31.15. . .The director of any hospital. . .may receive. . . as an informal patient any suitable person in need of care and treatment requesting admission thereto. . . .

§31.17. . .In order for a person to be suitable for admission. . . as a voluntary or informal patient. . .he must be notified of and have the ability to understand. . . :

1. that the hospital. . .is. . .for the mentally ill.
2. that he is making an application for admission.
3. the nature of the voluntary or informal status, ...

§31.19. . .The director shall cause all patients admitted as voluntary or informal patients to be informed once during each one hundred twenty days. . .of their status and rights, including their right to avail themselves of the. . .mental health information service. . . . [T]he written consent of a patient to his continued stay. . .shall be obtained and a copy. . .given to the mental health information service.

§31.21. . .It shall be the duty of all. . .officers. . .relating to the mentally ill to encourage any person. . .to apply for admission as a voluntary or informal patient. . . .

The procedure for handling involuntary admissions on a medical certificate to mental institutions in New York is determined by the following sections of the law:

§31.27. . .(a) The director of a hospital may receive and retain therein as a patient any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, accompanied by an application for the admission of such person. . . .

(b) Such application. . .may be executed by any one of the following:

1. any person with whom the person alleged to be mentally ill resides.
2. . . .the nearest available relative.
3. the committee of such person.
4. an officer of any. . .charitable institution. . . in whose institution the person alleged to be mentally ill resides.
5. the director of community services or social services. . . .
6. the director of the hospital. . . .

7. the. . .person in charge of a facility providing care to certified narcotic addicts. . . .

. . . . . .

(d) . . .[A]n examining physician. . .shall consider alternative forms of care of treatment that might be adequate to provide for the person's needs without requiring involuntary hospitalization. . . .

(e) The director of the hospital. . .shall cause such person to be examined forthwith by a physician who shall be a member of the psychiatric staff of such hospital other than the original examining physicians. . . .

§31.29. . .The director shall cause written notice of a person's involuntary admission. . .to be given forthwith to the mental health information service. . . , to. . .the nearest relative. . .[and] as many as three additional persons. . . .

§31.31. . .If, at any time prior to the expiration of sixty days from the date of involuntary admission of a patient on an application supported by medical certification, he or any relative or friend or the mental health information service gives notice. . .of request for hearing . . . , a hearing shall be held. . . .

. . . . . .

. . .The court which receives such notice shall fix the date. . . at a time not later than five days from the date such notice is received. . . . [T]he court shall hear testimony and examine the person. . .in or out of court. If. . .the patient is in need of retention, the court shall deny the application for the patient's release. . . . If it be determined that the patient is not mentally ill or not in need of retention, the court shall order the release of the patient.

§31.33. . .If the director shall determine that a patient admitted upon an application supported by medical certification, for whom there is no court order. . . , is in need of retention and if such patient does not agree to remain in such hospital as a voluntary patient, the director shall apply to the. . .court. . .for an order authorizing continued retention. . . .

§31.35. . .If a person who has been denied release or whose retention, continued retention, or transfer and continued retention has been authorized. . . , or any relative or friend in his behalf, be dissatisfied with any such order he may, within thirty days. . . , obtain a re-hearing and a review. . . .

In New York, involuntary admission may be made on other than a medical certificate, as indicated in the following section:

> §31.37. . .The director of a hospital, upon application by a director of community services or an examining physician designated by him, may receive and care for. . .any person who, in the opinion of the director of community services or his designee, has a mental illness for which immediate. . .treatment. . .is appropriate. . . .
>
> The need for immediate hospitalization shall be confirmed by a staff physician of the hospital prior to admission. Within seventy-two hours, . . .the certificate of another examining physician who is a member of the psychiatric staff. . .shall be filed. . .

Emergency admissions for mental care are handled according to the following provisions of the New York law:

> §31.39. . .The director of any hospital. . .may receive and retain as. . .a patient for a period of fifteen days any person alleged to have a mental illness for which immediate. . .treatment. . .is appropriate. . . .
>
> The director shall admit. . .only if a staff physician. . .finds that such person qualifies. . . . Such person shall not be retained for. . . more than forty-eight hours unless. . .such finding is confirmed. . . by another physician who shall be a member of the psychiatric staff of the hospital. Such person shall be served, at the time of admission, with written notice of his status and rights. . . . [S]uch notice shall also be given to the mental health information service and. . . to such person or persons. . .as may be designated. . .by the person alleged to be mentally ill. If at any time after admission, the patient, any relative, friend, or the mental health information service gives notice. . .of request for court hearing. . .a hearing shall be held. . . .
>
> Within fifteen days. . .if a determination is made that the person is not in need of involuntary care and treatment, he shall be discharged unless he agrees to remain as a voluntary or informal patient. If he is in need of involuntary care and treatment and does not agree to remain as a voluntary or informal patient, he may be retained beyond such fifteen day period only by admission. . .pursuant to the provisions governing involuntary admission on application supported by medical certification. . . .
>
> §31.41. . .Any peace officer. . .may take into custody any person who appears to be mentally ill. . . . Such officer may direct the removal. . .to any hospital. . .or, temporarily detain any such person

in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or. . .the health officer. . . .

§31.43. . .Whenever any court. . .is informed. . .that a person is apparently mentally ill. . .such court shall issue a warrant directing that such person be brought before it. If. . .it appears to the court. . . that such person has or may have a mental illness. . .the court shall issue a civil order directing his removal to any hospital. . . .

Whenever a person before a court in a criminal action appears to have a mental illness. . .the court may issue a civil order as above provided. . . .

§31.45. . .The director of community services or his designee shall have the power to direct the removal of any person, within his jurisdiction, to a hospital. . .if the parent, spouse, or child of the person, a licensed physician, health officer, or peace officer reports to him that such person has a mental illness for which immediate. . . treatment. . .is appropriate. . . .

Sections 33.03 to33.35 contain a lengthy description of the procedures involved in admitting mentally retarded persons to appropriate schools in the state of New York. These procedures closely parallel the procedures outlined above for handling mental problems in general; accordingly, they will be summarized here.

In §33.03, the law provides that admission of mentally retarded persons to a school will be conducted only in accordance with a specific provision of the law. The following section, 33.05, defines such procedures in connection with the examination of a person allegedly mentally retarded. The requirement that all residents must be informed of their rights and of the availability of the mental health information service is given in §33.07. Section 33.09 contains a special provision for giving notices to the mental health information service concerning minors.

There may be voluntary admissions to a school, for which section 33.11 makes provision. Section 33.15 defines the suitability for a voluntary

admission, and section 33.17 provides that each person admitted voluntarily be provided an annual notice as to his status and rights. Voluntary admissions are encouraged among officials in section 33.19. The following section 33.21, provides for a conversion to voluntary admission. According to section 33.23, no voluntary resident shall be continued for longer than twelve months without a review of his situation. Section 33.25 provides for the admission and retention of certain non-objecting residents.

Section 33.27 provides for an involuntary admission on a medical certification. In the following section, 33.29, notice must be given to the resident and others in the case of each involuntary admission. The resident's right to a hearing is defined in section 33.31.

Section 33.33 gives a court authorization to retain an involuntary patient, and the final section 33.35, provides for a review of the court authorization to retain an involuntary resident.

Maryland. The December 15, 1973, issue of Psychiatric News contained the following report of new conditions in Maryland under the heading "Maryland Reshapes Commitment Laws, Patients' Rights":

> A person involuntarily committed to a state mental hospital in Maryland will, after October 1, be placed in a five-day observation period status during which the rights of family, legal, medical, and psychiatric consultation may be utilized, as well as a mandatory administrative hearing on the status of hospital admission. The patient also will have the right to refuse medication that may "substantially adversely impair his ability to participate fully in his hearing."
>
> These provisions are part of new regulations governing involuntary admission to state mental health facilities which will supersede regulations that have been in effect in Maryland since December 1970.
>
> Under the new regulations instituted by the department of mental hygiene, a person presented for involuntary admission to a state hospital enters an observation period. The person has the right to consult with his family, legal counsel, medical practitioner, or certified

clinical psychologist of his own choosing at his own expense during this period and by the end of the first working day after confinement, the patient must be notified in writing of the date, time, and place of a hearing to be held regarding his admission status. The hearing must take place within five days.

The hearings are to be presided over by a "hearing officer," who is described in the regulations as "an impartial officer designated by the secretary of health and mental hygiene to conduct and make administrative decisions after the hearing is held. . . ." The patient has the right to be examined by a physician or certified clinical psychologist of his choosing, the right to be represented by counsel at the hearing (who has prior access to the patient's medical records), the right to call witnesses, cross-examine adverse witnesses, and present evidence at the scheduled hearing.

The patient has the right to refuse medication that may adversely impair his ability to participate fully in the hearing.

The hearing officer must determine whether the "person whose admission or retention is sought is suffering from a mental disorder, and that the person . . .is in need of institutional inpatient care or treatment, and that the person. . .presents a danger to his own life or safety or the life or safety of others."

For those committed pursuant to the hearing, Maryland's revised regulations provide that the hearing officer must advise the patient of his right to seek judicial release (writ of habeas corpus), and of subsequent rights to receive a judicial hearing on the cause and legality of his admission and continued detention provided by Maryland law.

Also available to the patient upon his written request are administrative hearings conducted by the designated hearing officer six months after commitment, one year after commitment, and annually thereafter, with the same rights afforded to the patient as with the other hearings. "Every patient involuntarily confined in a facility shall be advised in writing of his right to request such a hearing and shall be assisted in making such request if he so desires."

Case Law

Interestingly, there appears not to be a substantial body of case law. particularly in terms of "land-mark" cases.

Mississippi. In one case (1) it was held that a former wife was not a relative within the contemplation of the statute. In another case, (2) it was held that the provision of Section 6909-03, Mississippi Code Annotated (1942), which says that the affidavit of "any citizen" may be received in commitment proceedings, operated to qualify that of another

section which makes a spouse an incompetent witness. . . . In still another case (3) it was held that Section 6906-01, Mississippi Code Annotated (1942), gives the courts authority to confine the dangerously insane or indigent incompetents for the protection of themselves and society.

Other states. Proceedings for an adjudication of insanity or mental incompetency are required to be in strict compliance with the statutory requirements, according to courts in Alabama, Colorado, Kentucky, Michigan, Missouri, Montana, and New Jersey. A judgment declaring the defendant to be a person of unsound mind is void in the absence of strict compliance with the statutory requirements, according to courts in Kentucky and Missouri. A determination of insanity can be made only in the manner prescribed, according to courts in Michigan and New York, and incompetency can be determined only in a proceeding brought for that purpose, according to a court in New Jersey.

Courts in Maryland and Tennessee have been concerned not so much with the question of who institutes a "lunacy" proceeding as with the question of whether it is for the best interests of the alleged "lunatic." In some jurisdictions, as in New York and Tennessee, any person may initiate the proceedings. As a rule, the application should be presented by a relative or friend of the alleged "lunatic". Relatives have been held to include a half brother in Louisiana, the nephew of the alleged incompetent's deceased husband in Tennessee, or, not necessarily connoting blood kinship, a person connected with another by blood or affinity in Tennessee. A friend, according to an Oklahoma court, means one favorably disposed toward the alleged incompetent and acting for his interest and benefit, with no particular degree of intimacy being required. A Wisconsin court found a social worker

the nearest friend available of an alleged imcompetent, even though the mother, an aunt, and an uncle were present. An application should be presented by the alleged incompetent's legal guardian, if he has one, according to a court in Pennsylvania.

In Maryland it was held that the proceedings may be instituted by some person other than a relative, and in Tennessee it was found that there is no general public policy which excludes those who are not next of kin or directly interested in the estate from initiating such proceedings. The proceedings may be instituted by any person in interest, according to a court in Missouri; such as a creditor, according to a court in New Jersey; and such person has been required, according to a court in Missouri, to have an interest in either the estate or the personal safety of the person proceeded against.

Except where there are enabling statutory provisions, a mere stranger is held not entitled to sue out a commission, according to a court in New Jersey, but it has also been held in the same state that the commission may issue on the petition of strangers on information by the attorney general.

In some jurisdictions, such as Connecticut and Pennsylvania, the applications may be made by local authorities, or by a law officer of the state, as in Tennessee and New Jersey. Further it has been held in Rhode Island that, where the alleged "lunatic" is wasting his property and is likely to become a charge on the town, the application may be made by any inhabitant of the town, and need not be signed by the overseers of the poor.

In Missouri, the state has been said to have an interest in "lunacy" proceedings as parens patriae, to protect the "insane" person and the public,

and to the end that such person may not waste his estate and become a public charge.

Several articles deal with related matters (4), (5), (6).

Recommendations

Model Legislation. In 1952 the National Institute of Mental Health issued "A Draft Act Governing Hospitalization of the Mentally Ill." In discussing the provisions of the Draft Act, Taylor (5) said:

> Section 9 (g). . .provides as an alternative ground for compulsory commitment that the patient, "is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to hospitalization. " . . .The Draft Act states that a person can be committed when he is mentally ill and, because of his illness, is "likely to injure himself or others if allowed to remain at liberty."

Interstate Compact on Mental Health. As of 1971, 38 states and the District of Columbia, not including Mississippi, had adopted the Interstate Compact on Mental Health. This Compact is as follows:

PART II. INTERSTATE COMPACT ON MENTAL HEALTH

Interstate compact on mental health

The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity

of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentaly deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information

concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authroities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervision, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdication of the escape in manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and

officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsiblities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction made advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdication in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal

charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representatives shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party

states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Admission to Residential Facilities for the Mentally Retarded. In May, 1971, the Joint Commission on Accreditation of Hospitals released the following standards for the admission of persons to residential facilities for the mentally retarded. These standards are supported by the American Association on Mental Deficiency, National Association for Retarded Children, Council for Exceptional Children, United Cerebral Palsy Association, and the American Psychiatric Association.

1.3 Admission and Release

1.3.1 No individual whose needs cannot be met by the facility shall be admitted to it.

1.3.1.1 The number admitted as residents to the facility shall not exceed:

1.3.1.1.1 Its rated capacity;
1.3.1.1.2 Its provisions for adequate programming.

1.3.2 The laws, regulations, and procedures concerning admission, readmission, and release shall be summarized and available for distribution.

1.3.2.1 Admission and release procedures shall:

1.3.2.1.1 Encourage voluntary admission, upon application of parent or guardian or self;
1.3.2.1.2 Give equal priority to persons of comparable need, whether application is voluntary or by a court;
1.3.2.1.3 Facilitate emergency, partial, and short-term residential care, where feasible;
1.3.2.1.4 Utilize the maximum feasible amount of voluntariness in each individual case.

1.3.2.2 The determination of legal incompetence shall be separate from the determination of the need for residential services, and admission to the facility shall not automatically imply legal incompetence.

1.3.3 The residential facility shall admit only residents who have had a comprehensive evaluation, covering physical, emotional, social, and cognitive factors, conducted by an appropriately constituted interdisciplinary team.

1.3.3.1 Initially, service need shall be defined without regard to the actual availability of the desirable options.

1.3.3.2 All available and applicable programs of care, treatment, and training shall be investigated and weighed, and the deliberations and findings recorded.

1.3.3.3 Admission to the residential facility shall occur only when it is determined to be the optimal available plan.

1.3.3.4 Where admission is not the optimal measure, but must nevertheless be recommended or implemented, its inappropriateness shall be clearly acknowledged and plans shall be initiated for the continued and active exploration of alternatives.

1.3.3.5 The intended primary beneficiary of the admission shall be clearly specified as:

a. The resident;
b. His family;
c. His community;
d. Society;
e. Several of the above.

1.3.3.6 All admissions to the residential facility shall be considered temporary, and admissions shall be time-limited when appropriate.

1.3.3.7 Parents or guardians shall be counseled, prior to admission, on the relative advantages and disadvantages and the temporary nature of residential services in the facility.

1.3.3.8 Prior to admission, parents or guardians shall, and the prospective resident should, have visited the facility and the living unit in which the prospective resident is likely to be placed.

1.3.4 A medical evaluation by a licensed physician shall be made within one week of the resident's admission.

1.3.4.1 Upon admission, residents should be placed in their program groups, and they should be isolated only upon medical orders issued for specific reasons.

1.3.5 Within the period of one month after admission there shall be:

1.3.5.1 A review and updating of the preadmission evaluation;
1.3.5.2 A prognosis that can be used for programming and placement;
1.3.5.3 A comprehensive evaluation and individual program plan, made by an interdisciplinary team.

1.3.5.4 Direct-care personnel shall participate in the aforementioned activities.

1.3.5.5 The results of the evaluation shall be recorded in the resident's unit record.

1.3.5.6 An interpretation of the evaluation, in action terms, shall be made to:

1.3.5.6.1 The direct-care personnel responsible for carrying out the resident's program;
1.3.5.6.2 The special services staff responsible for carrying out the resident's program;
1.3.5.6.3 The resident's parents or their surrogates.

1.3.6 There shall be a regular, at least annual, joint review of the status of each resident by all relevant personnel, including personnel in the living unit, with program recommendations for implimentation.

1.3.6.1 This review shall include consideration of the advisability of continued residence and alternative programs.

1.3.6.2 At the time of the resident's attaining majority, or if he becomes emancipated prior thereto, the review shall include consideration of:

1.3.6.2.1 The resident's need for remaining in the facility;
1.3.6.2.2 The need for guardianship of the resident;
1.3.6.2.3 The exercise of the resident's civil and legal rights.

1.3.6.3 The results of these reviews shall be:

1.3.6.3.1 Recorded in the resident's unit record;
1.3.6.3.2 Made available to relevant personnel;
1.3.6.3.3 Interpreted to the resident's parents or surrogates;
1.3.6.3.4 Interpreted to the resident, when appropriate.

1.3.6.4 Parents or their surrogates shall be involved in planning and decision making.

Specific recommendations. There are a number of assumptions in the present Mississippi laws which are rather out moded. The laws of the other states reviewed make different assumptions. They are built on the notion that mental disorders are often subtle, transitory, and curable. Accordingly, a variety of categories and procedures are appropriate to handle a variety of situations wherein people need help.

1. It is recommended that the laws of Mississippi be revised to clarify the provision for a voluntary commitment on the part of an individual who needs help. Of course, a person who makes a voluntary commitment should be able to leave the institution upon reasonable notice, although the staff of the institution should have a procedure that can be used to detain serious cases. An informal commitment, such as that used by several states, would be useful to provide a service such that a person could obtain help with mental problems without ever having on his record a notation of mental care. Naturally, this recommendation assumes the existence of agencies that are equipped and staffed to care for voluntary admissions.

2. The Mississippi laws should be revised such as to provide for emergency care of mental problems, say for a period of 24 to 48 hours, at the expiration of which the patient would be released, would stay on as a voluntary patient, or formal commitment procedures would be initiated.

3. The Mississippi laws should be revised to include a psychiatrist or Ph.D. clinical psychologist in addition to or in place of one of the physicians now incorporated in the statutes.

4. It is recommended that the alleged mental incompetent be represented by counsel at any and all hearings, the counsel to be appointed by the court if the person is unable to secure his own.

5. It is recommended that for those under a certain age, say 18, that the youth or family courts or youth courts under county courts instead of the chancery court be the place for the determination of the need for institutionalization.

6. It is recommended that there be established an agency, perhaps similar to the New York mental health information service, whose functions include advising patients and their relatives, guardians, and friends of the rights of patients.

7. It is recommended that all commitments to a mental institution be for a particular time, such as one year, renewable as necessary, but with a mandatory review of the patients' condition prior to renewal of the commitment.

8. It is recommended that Mississippi enact the Interstate Compact on Mental Health and enact into law the intent of the standards for admission of persons to residential facilities for the mentally retarded.

9. It is recommended that there be two separate and distinct sets of laws in Mississippi for the mentally ill and for the mentally retarded.

10. It is recommended that the language employed in the laws of Mississippi should be updated to be consistent with that of the Diagnostic and Statistical Manual of Mental Disorders (Second Edition, 1968) by the American Psychiatric Association.

11. It is recommended that institutions for the mentally retarded should only accept for long-term and inpatient care those individuals functioning in the severely and profoundly retarded ranges. Those individuals functioning above such levels, except in emergency or crisis cases, should receive treatment on an outpatient basis or through community programs.

12. It is recommended that the laws should take into account the existence of community health centers within the state. The law should specify that before an individual is commited to a mental institution, all alternative treatments should be explored, including out-patient treatment at a community mental health center or partial hospitalization treatment. Where possible, the law should provide that individuals being considered for commitment should be screened at a community mental health center for recommendations concerning the appropriateness of commitment and the availability of alternative modes of treatment.

13. It is recommended that for involuntary commitment of a mentally retarded person, an examination by a psychiatrist or Ph.D. clinical psychologist be required.

14. It is recommended that all juvenile offenders receive a psychological examination before being commited to a state training school, and that recommendations for treatment, if there are recommendations, be considered by the court.

NOTES

(1) Wactor v Wactor, 245 M 132, 146 So 2d 540 (1962).

(2) Brown v United States, 321 F2d 898 (1963).

(3) Baum v Greenwald, 95 Miss. 765, 49 So 836 (1909).

(4) James W. Mann and Gene Parker, "Legal Status of the Mentally Retarded and Mentally Ill in Mississippi." Mississippi Law Journal,40:78 et seq. (1969).

(5) Gary D. Taylor, "A Critical Look Into the Involuntary Civil Commitment Procedure." Washburn Law Journal. 10:237-261 (1971).

(6) Charles W. Murdock, "Civil Rights of the Mentally Retarded: Some Critical Issues." Notre Dame Lawyer. 48:133-188, October, 1972.

(7) Joint Commission on Accreditation of Hospitals, Standards for Residential Facilities for the Mentally Retarded. n.p.: The Commission, May, 1971. pp.11-13.